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FCC 03M-33Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DISPATCH 02531

In the Matter of)	EB Docket No. 03-85
)	
BUSINESS OPTIONS, INC.)	File No. EB-02-TC-151
)	
Order to Show Cause and Notice of)	NAL/Acct. No. 200332170002
Opportunity for Hearing)	FRN: 0007179054
)	

MEMORANDUM OPINION AND ORDER

Issued: August 19, 2003

Released: August 20, 2003

Background

1. This is a ruling on Motion to Enlarge Issues filed by the Enforcement Bureau ("Bureau") on July 15, 2003.

2. Under the Commission's Rules of Practice, the respondent party, Business Options, Inc. ("BOI"), had ten (10) days within which to file an Opposition pleading. 47 C.F.R. § 1.294(c). BOI has not filed a pleading.¹ The time for filing an Opposition has expired and, provided that the requirements for adding issues are met, the issues sought by the Bureau may be added by default.

3. Under the Rules of Practice, a motion to enlarge issues may be filed by any party but must be filed no later than fifteen days after the issues set for hearing have been published in the *Federal Register*. 47 C.F.R. §§ 1.229(a)(b). In this case, the issues were set under *Order to Show Cause and Notice of Opportunity for Hearing*, 18 F.C.C. Rcd. 6881 (2003), which was published on April 29, 2003, *Fed. Reg.* Vol. 68, No. 82, pages 22699-22703. The Bureau's Motion to Enlarge Issues appears to have been filed out of time.

4. However, the Bureau alleges that it did not discover the facts underlying the requested issues until after discovery. The Bureau alleges that on June 19, 2003, BOI first admitted to never filing a Telecommunications Reporting Worksheet ("Worksheet")

¹ Informal advice was provided by BOI's counsel via e-mail of August 7, 2003, that in the interest of conserving BOI's resources, it was decided "not to oppose the motion to enlarge."

required by the rules to show timely contributions to a universal service fund.² The Commission assesses carrier contributions to universal service based upon end-user revenues. 47 C.F.R. §§ 54.706, 54.709. Failure to file the Worksheet or to submit required contributions may result in enforcement action against the carrier. 47 C.F.R. § 54.713. Therefore, the absence of Worksheets in response to a discovery request is highly relevant evidence as to whether BOI was complying with Commission rules.

Discussion

5. Motions to enlarge issues that are filed after fifteen days from *Federal Register* publication, may be accepted if good cause is shown for the delay in filing. 47 C.F.R. § 1.229(b). But motions to enlarge issues that are based on newly discovered facts must be filed within fifteen days after such facts are discovered. *Id.* The Bureau has failed to show with specificity that it met subsection (b)'s requirement for filing fifteen days after obtaining newly discovered evidence.

6. However, the Rules of Practice further provide that even in the absence of showing good cause delay:

The motion to enlarge will be considered fully on its merits if (and only if) initial examination of the motion demonstrates that it raises a question of probable decisional significance and such substantial public interest importance as to warrant consideration in spite of its untimely filing.

47 C.F.R. § 1.229(c). Such motions must contain specific allegations of fact determined by official notice, or facts alleged through affidavits of persons having personal knowledge. 47 C.F.R. § 1.229(d).

7. The Bureau alleges that BOI is engaged in the business of reselling long-distance service and that BOI principals hold similar managerial positions with other interconnected companies engaged in the same business. BOI does not dispute this fact. The Bureau also alleges that it has evidence obtained through discovery of interchangeable operations of these interconnected companies.

8. According to the Bureau, multiple, interconnected companies, using various names, allegedly were conducting the same business, i.e., resale of long distance telephone service over lines owned and maintained by Qwest (supporting documentation cited in Bureau's tabbed motion). The Bureau's evidence of a combine is not speculative

² Section 254(d) of the Communications Act of 1934, provides that "[e]very telecommunications carrier that provides interstate telecommunications service shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal services."

or *de minimis*.³ It shows the same management team conducting the same business from the same location with P&L statements for 2000 and 2001 showing the same income, gross receipts or sales appearing in income tax returns. Despite significant revenue receipts, there was a failure to make contributions to the federal universal service and TRS funds, or to file the required Worksheets.

9. Based on the foregoing, which appear to be supported by reliable evidence that includes responses to Bureau correspondence/letter of inquiry, certificates of incorporation, service agreements concerning Qwest, business records, income tax returns, responses to Bureau requests for admissions, declarations of witnesses having personal knowledge, reports to state public utilities commissions, and consumer complaint, it can be determined that the Bureau has met its burden under § 1.229.

Order

10. Accordingly, IT IS ORDERED that the following issues sought by the Enforcement Bureau are added:


- (g) To determine whether Business Options, Inc., Buzz Telecom Corp., U.S. Bell, Inc. and/or Link Technologies failed to make required contributions to universal service support programs, in violation of § 254(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 254(d), and § 54.706 of the Commission's rules, 47 C.F.R. § 54.706;
- (h) To determine whether Business Options, Inc., Buzz Telecom Corp., U.S. Bell Inc. and/or Link Technologies failed to make required contributions to the Telecommunications Relay Services Fund, in violation of § 64.604(c)(5)(iii)(A) of the Commission's rules, 47 C.F.R. § 64.604(c)(5)(iii)(A)
- (i) To determine whether Business Options, Inc., Buzz Telecom Corp., U.S. Bell Inc. and/or Link Technologies failed to file Telecommunications Reporting Worksheets, in violation of §§ 54.711, 54.713, and 64.604(i) of the Commission's rules, 47 C.F.R. §§ 54.711, 54.713, 64.604(c)(iii)(B);

³ BOI claims to be offering long distance service to customers in 46 states, and tax records obtained in discovery reveal gross receipts exceeding \$5 million in 2000 and \$8 million in 2001. With such significant revenues there is a substantial question of fact raised as to why there were no contributions to the universal and TRS funds. *See Citizens Jazz v. F.C.C.*, 775 F.2d 392, 395 (D.C. Cir. 1985) (totality of facts raise such a sufficient doubt that further inquiry is called for).

- (j) To determine whether an Order for Forfeiture should be issued pursuant to § 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), against Business Options, Inc., Buzz Telecom Corp., U.S. Bell, Inc. and/or Link Technologies [for] failure to make the required universal service contributions in a timely manner, in violation of § 254(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 54(d) and § 54.706 of the Commission's Rules, 47 C.F.R. § 54.706; \$10,000 for each failure to file the required Forms 499 in a timely manner, in violation of §§ 54.711, 54.713, 64.604(c)(5)(iii)(B) of the Commission's Rules, 47 C.F.R. §§ 54.711, 54.713, 64.604(c)(5)(iii)(B); and (c) \$10,000 for each failure to file required contributions to the Telecommunications Relay Services Fund, in violation of § 64.604(c)(5)(iii)(A) of the Commission's Rules, 47 C.F.R. § 64.604(c)(5)(iii)(A).

11. The burden of proceeding with proof and the ultimate burden of proof are assigned to the Enforcement Bureau. *Communications Act of 1934, as amended*, § 312(d) [47 U.S.C. § 312(d)].

FEDERAL COMMUNICATIONS COMMISSION⁴



Richard L. Sippel
Chief Administrative Law Judge

⁴ Courtesy copies of this *Order* were sent to counsel for the parties by fax or e-mail on the day of issuance.